



SOUHEGAN TECHNICAL REVIEW COMMITTEE

Meeting Minutes

February 6, 2004

NH Department of Environmental Services

Rooms 110-111

9:30 AM – 11:30 AM



Members Present:

Alden Greenwood
William C. Ingham
John R. Nelson
Carl Paulsen – By Phone
Brian Mrazik
Douglas Bechtel
Vernon B. Lang
Jim MacCartney
Ralph W. Abele
Donald L. Ware
Thomas Roy
Kenneth D. Kimball

Members Absent:

Representative Richard T. Cooney
Senator Russell E. Prescott

Others Present:

None

DES Staff Present:

Paul Currier, Administrator Watershed Management Bureau
Wayne Ives, Instream Flow Coordinator
Steve Couture, Rivers Coordinator
Marie LosKamp, Executive Secretary, Watershed Management Bureau

9:30 – 9:45 Introductions

Paul Currier opened meeting, gave directions for various rooms, and sent attendance sheet around.

Round of Introductions: Paul introduced DES staff and each TRC member present introduced themselves and their affiliation.

9:45 -11:00 Presentation: Souhegan River Instream Flow Pilot Program Discussion of Pilot Program and Duties of the TRC Tentative Project Timeline

Paul Currier

Paul gave a brief summary and overview of the program and the committee's responsibilities and informed members they could stop him at any time to ask questions.

Please see Attachment A for PowerPoint presentation which will discuss the following:

Summary of the pilot program and its history, specific information about the Souhegan, how the protected instream study and the water management plan (WMP) will proceed under the pilot program and the role of the Technical Review Committee (TRC) and the Water Management Planning Area Advisory Committee (WMPAAC) in the whole process. This committee is one of two that will participate in the pilot program, and these committees are specific to the Souhegan.

Summary of the History – The protected instream flows are part of the rivers management protection program that was enacted in 1988 and the protected instream flow measures were added in 1990. This [see slide] is an excerpt from the law, the law directs the commissioner of DES to adopt rules specifying standards criteria and procedures by which a protected instream flow shall be established and enforced for each designated river or segment. The law further says the protected instream flow levels established under this section shall be maintained at all times except when inflow is less than the protected instream level as a result of natural causes. The law tells DES to do it and then it provides that once the flows are established that they be enforced.

The main forum for Rules was the SB330 study committee. This is a legislative study committee which is assigned to oversee the pilot program process. Representative Cooney is chair of that committee and Senator Prescott is also a member of that committee. The committee is composed of three senators and three representatives. That committee has provided one of the forums for the development of the ideas that have led to the pilot program.

Riparian Rights and the Public Trust Doctrine - The basic idea of riparian rights is that owners of stream side property have the right to reasonable use of the water that flows by or through their property. Reasonable use means that riparian owners can take all the water they want, divert all the water they want, provided it does not adversely affect the public trust and it does not adversely affect the riparian rights of any downstream riparian owners. Riparian rights are common law, as is public trust doctrine. So it is case law in the courts that determines and defines riparian rights and public trust. Most the case law is relative to the impact on downstream riparian owners. Most of the case law in New Hampshire comes from the era when water power was much more prevalent for use for power.

Public trust doctrine comes from British common law public and basically says that the state holds a public trust for certain instream uses: fishing, biological integrity, swimming and boating and there are others navigation, etc. The state holds the public trust in the use of the water in the stream. In New Hampshire the ownership situation for streams is that the bottom of rivers and streams is privately held land, it is owned by someone. That is not true of great ponds, ponds over 10 acres where the state owns the bottom. For rivers and streams someone, not the state, owns the bottom. The state holds the public trust interest in the water and other aspects of the streams.

Question: Vernon Lang – *with respect to major rivers in New Hampshire, the Connecticut and the Merrimack, does that ownership hold for those?*

Paul - Yes it does.

Question – *Including impoundments?*

Paul – If there is an impoundment, someone owns the flowage rights. Someone owns the land underneath the impoundment, and someone else may own the flowage rights of the impoundment. In the case of the Connecticut River, NH owns up to the un-impounded bank on the Vermont side.

History of the development of instream flow protection rules. Work on the rules began in 1990 shortly after the passage of the law. Draft rules have been produced along the way. In 1994 there was a first public draft. In 1995 there was another draft working with an advisory committee and stakeholders. These almost went to rule making in 1996. Basically it was apparent that there was going to be major opposition and DES stopped work on them. The basic concept in 1996 rules was a trigger flow process whereby there would be a turn-down of water use by affected water users and ultimately a cessation at Q90 depending on a series of trigger flows that related to the hydrograph on the particular rivers, and it only applied to affected water users on designated river segments. There was then a lull in activity until 1998. Rule development restarted in 1998 and we came out in 1999 with a reworked and updated version of the trigger flow concept. That went to a pre-rule making public hearing and one of the aspects of that was that we were able to do an estimate of the economic impact on affected water users of that proposal. Loon Mountain gave us access to their construction cost estimates, planning cost estimates for multiple stone making options, we were able to use those to develop a reasonable ballpark estimates, cost was estimated at \$50 million dollars and that idea was dead. We took lots of testimony in 1999, two major aspects came out. One the whole watershed should be involved in protective flows, not just affected water users next to the designated reach and two that the protected flows needed to be specific to the river in question and not the general standard setting method for the whole state. We heard that multiple times in testimony. In round three those ideas were incorporated into a revised set of rules in 2001. Those concepts are the ones that are embodied in the set of rules that we have ultimately adopted as part of the pilot program.

The pilot program was legislated in 2002. This pilot program applies to designated rivers. There are aspects of protected flows that come under the water quality standards under the clean water act that applies to all flowing waters, but this pilot program is specifically applicable to designated rivers.

I had to do this, and this is not a complete list [see slide], but there have been major contributors to the development of these ideas that have been willing to engage with DES both formally and informally in a very constructive way to get where we are. So, thanks to those who have come before us and to those that are still with us. This has been a history of the Instream Flow Rules RSA 483:9-C.

Main idea of the pilot program is that it provides an administrative framework for applying the principles of a public trust doctrine and riparian doctrine, in a structured way, to develop both protective flows and develop concepts of shared water use on a particular river. River specific and the idea is that there are two components to the pilot program. There are protected instream flows, which is the main focus of this committee, which will be developed and established in a formal action by the agency after public participation, and then those protected flows will be implemented by the development of a water management plan which involves a negotiated discussions among various water users and dam owners in the watershed and a common understanding of the storage that is available in the watershed, the water use needs

and the timing of those needs amongst the various water users. The pilot program and actually the water management planning and advisory committee provide a forum for those discussions. The affected water users include groundwater withdrawals within 500 feet of any stream in the watershed. Another part of the pilot program is that the law provides for legislative oversight through the SB330 study committee and also there are specific milestones and public hearing required, and a report to the legislature when we get all done not after 2008.

Question: Brian Mrazik - Paul, is that 500 feet in the statute?

Paul – No. That is in rules. That was worked out before the statute. What happened was we developed a set of rules which actually included the two advisory committees and a lot of other things. What the legislature did, and they worked with us on this, they pulled the advisory committees out, put it in law, they put some statutory deadlines and reporting requirements and legislative oversight in the law, and then directed DES to go ahead and adopt rules with the concepts that we had developed previously in our rule making activities that meshed with the law, and that is what we did. Those rules that you have in the back of your notebook were adopted in May 2003.

There were 2 rivers in the pilot program the Lamprey and Souhegan. We developed cost estimates to do the studies for both of those contracted studies anticipating that we would be able to fund the administrative costs of running the committees, the public participation process and so on using federal money which had been provided through Section 106 the Clean Water Act. The legislature, after a budget process in which it was in the capital budget, then it was out of the capital budget, then it was in the general fund budget, then it was out of the general fund budget, and finally half of it got put back, the Souhegan half. We have funding to proceed with the Souhegan River part in the pilot project.

We have just recently learned that we will be receiving federal money to proceed with the Lamprey River part of the pilot project but the Lamprey River is probably going to lag about 6 or 8 months. The process will exactly parallel to the Souhegan River. There will be two committees with the same process for nominating. I would expect that many of you folks will also be on Technical Review Committee for the Lamprey, that there will be overlap there. On the other hand for the water management planning area advisory Committee, those are specifically designed to be watershed specific and to have stakeholders in the watershed on those committees. So this committee is a technical review committee. It is designed to look at the technical aspects of setting instream flows and to review and comment and give advise to DES. The WMPAAC can also do that if they want to, but their specific role is to provide a vehicle for watershed interests and stakeholders to participate in the development of the water management plan and protected flow.

More background - what are we protecting by setting protective flows. There are three places in the law where these are identified. There are instream protected uses, there are outstanding characteristics and there are resources for which the river is designated. Those are what are to be protected by setting protective instream flows. There are also, in the rules, designated uses under the Clean Water Act. There is a lot of overlap in all of these categories. You have in your notebook, the white tab, PISF, that is an attempt to make sense out of and identify the cross connections and define the words that are in these places in the statute relative to what is being protected.

Summary of what is in the instream flow rules, which are in the back section of your notebook. There is the general statute RSA 483, which is the Rivers Management Protection Act. There is Chapter 278, which is the pilot program legislation, and then there are the rules Env-Ws 1900, which implement the pilot program. Basically the rules include a structured process for developing the protected instream flow study leading to an adoption of protected instream flow plans by DES, the development of a water management plan and its subsequent adoption by DES. The rules apply to affected water users and affected dam owners which are water users within 500 feet of rivers and streams and dam owners in the watershed. Specified in the rules, there is a “de minimis” water use that can always be used no matter what the flow in the river is which is 5% of 7Q10. Affected dam owners are dam owners with an impoundment with a surface area greater than 10 acres. There are lots of provisions for public participation and input.

Information on the Souhegan – the entire New Hampshire part of the Souhegan is designated and there is a little piece of the Souhegan watershed which is in Massachusetts which is not included because we cannot do things across the state line in Massachusetts. There are about 200 square miles, 34 miles of designated reach, and there are in the statute reaches which can be designated as natural, rural, rural community, and community; and no natural segments. Natural segments have greater protection measures than others, especially relative to water quality issues and dams. There are no natural segments on the Souhegan. There are 3 stream gauges, two of which are active, 23 affected dams and 18 affected water users. One of the characteristics of water users is that they can have both a source and a discharge, and both of those are registered under the water user process and reported.

Question – Douglas Bechtel - *Paul do you have any sense of how long the stream gauges have been active?*

Paul – *Maybe Wayne knows.*

Wayne – The Souhegan has a gap of 25 years, but it started in 1909, and is continuous now, it is running; but from 1976 to 2001, there is a gap in the data [partial second]. Stoney Brook started in 1963 and is current now.

Paul – The Souhegan River gauge is the one that is really useful when we get to doing hydrograph things, we will have to do some major transpositions, maybe using gauges outside of the watershed.

Wayne – That is one of the issues because of its low placement in the watershed, it will need some corrections for what it is really applicable to. I think we are going to have to do some creative development on the upstream ends of things.

Question – Douglas Bechtel - *Is there a gauge there? Has there always been an impoundment there with a gauge?*

Wayne – I can't tell you that, but I can check into that for you. I do have some of the history of the ages of some of the dams, but there are a lot of gaps in the data coverage for the dam issues.

Paul – A quick list again, and we will become much more familiar with all of this as the pilot program proceeds. Paul showed a list of the affected water users that are registered within our water user registration program. We have several country clubs, irrigation for country clubs; Pilgrim Foods is a well; Pike Industries uses river water directly for aggregate production and washing; Pennichuck, Monadnock Mountain Spring, Milford, and Fish and Game are wells;

and Greenville is surface water; Alden Greenwood is a dam. You have a mixture of water users. Not the complete range but a mixture. Alden asked us before the meeting started the reason for picking the Souhegan and one of the reasons that the Lamprey and Souhegan were picked is that we did a screening process at the request of the SB330 study committee and ranked the designated rivers, there are seven designated rivers for which the general standard is not met. If you read the rules the general standard is designed as a trigger to begin this process of setting protected flows and developing water management plan. There were 7 designated rivers for which the general standard was not met, and using a screening process which was designed to identify which rivers had the best mix of dam owners and water users, the Lamprey and Souhegan were selected. That is how we got the Lamprey and Souhegan as the pilot rivers. (Paul also went over the list of the affected dam owners which includes a number of DES owned lands and other ownership which includes a couple of recreational dams.)

Additional information, DES maintains water quality monitoring stations at various places throughout the watershed. Those are catalogued in our database as is the data that goes with them. The Souhegan River has a continuous reporting gauge that we will also have access to as the pilot proceeds.

The specifics of the instream flow study. The objective is to identify the uses and characteristics and resources for which the protected flows are being established, to evaluate the flow needs for those uses and to document those results in a study which can then be subject to public scrutiny and ultimately adopted by DES as enforceable protected flows. A footnote about enforceability – the scenario that we presented to the legislature (to the SB330 study committee) which is, in general, incorporated into the rules, is that once we have gone through this process of setting protected flows and adopting the water management plan, the water management plan is the vehicle by which the protected flows are implemented. The whole idea here is that once you have set the flows, the water management plan needs to provide for management of water use and dam operation in the watershed so that those protected flows are maintained. That is the criteria on which DES will adopt the water management plan. That water management plan will have specific provisions for each water user and each dam owner which describes how they are going to operate their business water use or dam in relation to stream flows in order to maintain the protected flows. User by user, dam owner by dam owner, user to specify conditions for water use and dam operations and that is the enforceable part. That is auditable. We expect that water users and dam owners will keep sufficient records so that DES can go and audit those records to see if that particular user or dam owner is complying with the water management plan. If not, we will work with them to correct their use and management.

Question: Douglas Bechtel - *Paul, do you have enforcement authority?*

Paul – It is in the statute, back on the first slide.

Question – Alden Greenwood - *There is a lot of regulation now on power dams, minimum flows and is that going to change?*

Paul – No.

Question - Alden Greenwood - *It will maintain the way it is.*

Paul — That will not change. George Legasse and the Granite State Hydro engaged us early in process. Where we got to was the current operating requirements on either FERC, license to

FERC exempt facilities, will not change especially not as a result of the pilot. But what we wanted to do is provide opportunity for reservoir management on those hydros in the category that is kind of not specified in FERC licenses. There were issues that we left unresolved with Granite State Hydro and the hydro interests, and we just decided to leave that unresolved for the pilot program and work it out later.

Alden – *Another question I have is that it was stated that there was no designated natural area on this river, what is a natural area?*

Paul – If you read the statute [RSA 483:9 through 483:9-b] there are specific sections for natural river segments and for all the other categories as well. The requirements for natural river segments are no dams; they are Outstanding Resource Waters under the Water Quality Standards which is a fairly restricted category as far as allowing changes in water quality, or degradation of water quality.

Jim - *A legislative designation when the Souhegan River was adopted in the program.*

Alden – *A nature area is something they said is in place.*

Paul – Those segments, as Jim said, those are designated by the legislature in the process of designating the river. They are proposed by whatever organization proposes the river designation and then they are subsequently adopted by the legislature if they meet the criteria of the water.

Alden – *How about the historic sections of the river? The reason I am asking the question, is that there are several sections that are considered historic by the state.*

Paul – That is a good point, RSA 483 - historic and architectural – is specifically one of the outstanding resources. It is in there and we are required to consider that.

Question - Carl – *I wonder if you could go over what happens if the WMP is not fully complied with and they don't result in protected flows.*

Paul – Hopefully we won't get there because unless DES screws up and adopts a WMP that does not do that, that would never happen. If anyone thinks or wants to reopen a WMP process there is a provision for that in the rules. In fact the WMP is intended to be a dynamic document, and it needs to be because water use and water users change over time and there needs to be a process in which new water users, every riparian owner gets to use water if they want to, and the only question is how much and when. So there is a provision for reopening a WMP for either a water use reason or a protected flow reason. Hopefully we won't do that very often.

Carl – *I just sort of felt like there might be some latitude in the plans that could result in that mish mash, so I just wanted you to go over that again as to how that works.*

Paul – That is what the protected instream flow study is going to identify, the uses that need to be protected. There is a series of work tasks that is specified in the rules that will be done by our contractor producing a draft report, and there will be methodologies for setting the protected flows that will be proposed by the contractor and then reviewed by this committee and DES and the other committee and then used to set the protected flows. That will result in a draft document which will go through public hearing process and ultimately be adopted and form the basis for the WMP.

Question - Jim – *Is that an exercise in going back through the statute, rules and the nomination documents to see which of those were identified and/or is that something you go out in the field and you identify whether or not those characteristics, resources, and uses are out there and if so what happens if the field study identifies things or says that there were some things that were identified in a nomination, for example, that the legislature designated as an outstanding characteristic and the field study says no that was wrong?*

Paul – I don't know, but that certainly would be possible. And that is exactly the idea, that the consultant is going to do a literature search, including the nomination papers, whatever else they get their hands on for documents that have been produced in and about the watershed that would identify these things and then they are going to go out and do a field review and maybe pickup some more details especially on aquatic life and maybe discover some places where the documentation and the actuality do not coincide.

Question - Jim – *What is the expectation about what happens in the event that they don't coincide? Either identifies the resources that were not identified previously or vise versa?*

Paul – Public input and then we work that out in the public forum. There are two public forum meetings. The idea that for watershed specific input, and this is right in the law, is the Water Management Area Advisory Committee will be a forum for that. Their membership is specifically decided to provide that. The other opportunity is through the public hearing. I have gone over the protected instream flow part, which is the focus of this advisory committee, once that is done, the WMP basically contains three parts which are put together to comprise the plan. These three parts are the water conservation plan (each affected water user will have a conservation plan that is specific to them), a water use plan (each affected water user will have a water use plan that is specific to them and matches with their conservation plan. Each one of those will also have an implementation schedule. There is no requirement that once the plan is in place any affected water user do anything all at once. Part of the consultant's job is to work with them to get an implementation plan once the parameters are set that the water users can live with. This was a big deal especially for the farm interests. A similar thing for dam owners - there would be a dam management plan; there would be a specific piece of that plan for each dam owner and an implementation schedule. There is also an economic analysis which is required in which the cost to implement these plans, water user and dam owner, by water user and by dam owner, will be estimated and identified by the public review process if they say the legislature is wrong?

Question - Brian – *Is one contractor going to do both?*

Paul - Yes we have received 8 bids and we specifically said that we expect them to do both. All 8 contractors have skills to do both.

The TRC is specified in law to be qualified by education or experience in water resources management or protection and duties are to advise the department on the preparation and conduct of the protected instream flow studies and to submit annual progress reports to the legislature.

The WMPA Advisory Committee - duties to provide information towards the completion of protected instream flow studies and water management plan, to review and comment on WMPs and submit annual progress reports to the legislature.

This is not final yet, but I anticipate that both committees will have a significant role in the selection of the contractor and that will be the focus of initial activity of the committee. There will be close interaction with this committee once the contractor is selected. We intend to have milestones by the contractor so that milestone reviews can be made by the committee so that we do not have any surprises at the end. The WMPAAC will provide information and assistance with WMP development.

Questions or Comments:

None

Handout – Table with a draft time frame, very rough draft timeframe at this point for the progress of the whole pilot program process. This timeframe is focused on the Souhegan with the Lamprey to lag 6 to 8 months behind the Souhegan. Our expectation is that we will bring a contractor on board by July of 04, that the contractor will have some of this sampling season, some summer weather available, field work done before 2005 and produce a draft report by spring of 05. The timeframe gets a little less certain from there. DES is required to produce a final report to the Legislature by December 31, 2008 and our intent is to go as fast as we can and not to stretch deadline. We are limited by ability of the consultant to do the work, and the ability of the committees and DES to run the public participation process. There is a massive amount of public participation in this whole process.

Question: Brian - *What is the status of the statement of work for the contractor. Is that written or something?*

Paul – No. We are working on it. We will give four contractors a detailed request for proposal. We expect that members of this committee, and members of the WMPAAC, will have a vote in the final selection process.

Question: Vernon – *Lets see if I have this correct as to what you have done initially. You have gone out with this request for qualifications and you have paired that down and then the remaining one you will give a detailed proposal.*

Paul - The RFQ is on the web site, we should put it as notebook add on. The intent of these notebooks is that we will give committee members read ahead materials to insert in the notebooks before each meeting. We will also post them on the web, so that you will have two places you can get everything that is in your notebook. These meetings are 1) a committee meeting, but 2) they are open to the public. Tell your constituents this too. If you have people that want to sit and listen, they are more than welcome to come and sit and listen. As a matter of fact, the intent would be to have fairly open meetings. If people want to come and participate from the sidelines in the process, (if there are votes they will not participate in that), but in discussion we would certainly encourage that. People, constituents, and stakeholders do not have to wait until public hearings or public information meetings to be part of the process.

Question: Ralph - *Have you given any general guidance on how you think the money is going to get split between the two efforts, the instream flow study. You could easily spend the full amount of money on the instream flow study.*

Paul – We should probably put this in the notebooks as well. We did a cost estimate. The \$355,000 is what the legislature appropriated and it was the exact amount of our cost estimate. That was based on a task by task estimate. What we have told the prospective contractors that have asked at this point is we have \$355,000. We expect this to be a lump sum contract. We expect full completion of both tasks

to be completed within the \$355,000 and we would work with the contractor to figure out how the payments break down by milestone. The contractor will get \$355,000.00.

What we have told them is we are on the low side on our estimate, and we will solicit the contractor that we think can be very efficient and produce completed products for both studies with the money that we have.

The relationship between DES and the contractor, we expect that DES will be able to provide for the administration and logistics, so that we are not spending contractor money to hold meetings, and prepare for meetings except for the contractor's part of that where they are preparing the results of their work for public review.

Question: *-Is this process going to be repeated for the Lamprey?*

Paul – Yes.

Question: *Same amount?*

Paul – We are not sure yet. We have estimated \$355,000 for the Souhegan and \$245,000 estimated for the Lamprey based on the water user mix and length of river and so on. Congress has given us \$600,000 for protected flow studies, and I don't actually know what the Congressional language is, so I am not sure what strings are on that. We wouldn't plan to use all of that for the contractors. So that is to be determined.

One of the first things that this committee needs to do, and this committee is designed to be autonomous. This is an advisory committee that is expected to operate independently in that advisory capacity much as the RMAC, which is the advisory group for DES for the whole rivers management protection program operates. The committee would have autonomy in their advisory capacity and DES would provide staff support. The staff support will be a combination of the three DES staff people that are here today. So what we would like to have the committee do is to elect a chairperson and vice chair. We will also provide secretarial support to provide minutes, agendas, etc. We would like you to elect a chair and vice chair and then they will run things as far as the meeting goes and coordinate with us as staff for future meeting dates, and committee activities, etc.

11:00 – 11:15 Election of Chair and Vice-Chair

Paul requested a volunteer to moderate the chair person selection process. Having none, Paul will act as moderator to accept nominations for a chair person or volunteers.

Question: Vern – *How many meetings to you anticipate and how much time will be required?*

Paul – It is somewhat up to the advisory committee, there is going to be a flurry of activity as we select the contractor. Then there will be a gap between contractor being selected and contractor doing something that the committee can review. I expect that gap to be summer and into the fall, when we would get our first contractor work product sometime in the fall or late fall. Then there will be another flurry of activity by both committees and that will probably happen late fall, maybe another meeting in the winter and then there will be a draft. Then there will be some intensive activity to get the draft ready for public presentation. So I guess we are looking at meeting once every couple of months maybe with some gaps that are longer than that and maybe with some times when we meet once a month. If it goes according to this schedule that I handed out, by fall of 2005, we will have the public participation done and DES will have adopted a protected flow. This committee is going to stay in

place, as an active committee, until we are done with the pilot program. I would expect that once we have adopted protected flows, the committee will not need to meet very often, because the focus will then switch to the development of the water management plan and I would expect that there may well be some questions of interpretation as the water management plan gets developed as to how the protected flows are actually going to be implemented and that may involve some committee activity. I wouldn't expect it to be a lot of committee meetings after 2005.

The only reason the other committee starts later is there nominations have to go through a governor and council step, which is almost complete. We are actually going to catch them up basically by slowing down the contractor selection process. We will not begin the official contractor selection process until they have met for the first time and have elected a chair and that will be early March we hope.

The law envisions separate activities by the committees. I would think that both committees would suffer meeting burn out if we tried to interact too much.

Comment: Ken – *I think having been involved in a lot of history of this, the hope was that this committee could do the science part without the political pressure and then once this committee has come up with what the instream flow policy should be based on science, then that committee could move ahead.*

Question: Brian – *It would seem that probably the biggest way we could help you is in developing this scope of work and evaluating proposals which are really upfront things. I am wondering to what depths you wanted this committee to participate in both of these things.*

Paul- We don't know yet. A fair amount of think-work is going to need to go into selecting the methodology for actually establishing the protected flows and this committee will do a fair amount of work in that regard. Our intent is to have that be one of the milestones. That is before any methodology is selected the contractor works that up in enough detail so this committee can work it over. That is what we want to happen. One of the ideas that came out of the testimony we heard was that the methodologies and the process ought to be river specific. That is you cannot pick a particular method and apply it to all uses and resources and so in our rivers. You have to look at the specifics of the river and the watershed characteristics and the uses that you are protecting in order to select a method. We expect that to be a real important step.

- **Vern nominated Ralph as Chair.** Ralph stated that being a Massachusetts resident is a huge milestone around his neck.

Paul – It would probably be best if representatives from conservation interests or business interests provide chair and vice chair

- **Tom Roy nominated Ken Kimball as Chair – Ken accepted. All in favor say aye, opposed say nay. All in favor for Ken Kimball as chair, none opposed. Ken Kimball is the duly nominated Chair.**
- **Ken Kimball nominated Tom Roy as Vice Chair – Tom accepted. All in favor say aye, opposed say nay. All in favor for Tom Roy as Vice Chair, none opposed. Tom Roy is the duly nominated Vice Chair.**

Paul – We have a chair and vice chair.

Paul turned the meeting over to Ken.

11:15 – 11:30 Other Business:

Ken - The next order of business is to set the next meeting date.

Paul - The first WMPAAC meeting is tentatively set for early March.

Ken – Once that committee gets selected, and if I recall correctly, then we jointly move ahead to go through the process of selecting the contractor. Based on the time schedule that you see in front of us, what is the most effect time frame to meet relative to that whole process?

Paul – The answer would be shortly after their first meeting. We need to roll the contractor process as soon as possible after the first meeting of the WMPAAC. We are fairly sure that the G&C will approve the entire slate of nominees, and that we will be able to get a date from that, but we do not know yet.

Ken – my preference would be to a select date and then we can try to move it if we have to. I would say in mid-march.

Week of March 22nd need to meet on Monday or a Friday to have legislators present.
Carl has issues with Fridays. We should look at Mondays.

- **Next meeting will be Monday, March 22 at 9:30 am. DES staff will find a location and let us know.**

The TRC will meet here in Concord and the other committee will meet somewhere in the watershed

Ken - The presentation was excellent, and I was actually very appreciative in just seeing how organized the packet was particularly for folks that haven't taken a look at this. It is a wealth of information. Are there any other questions or information that people would want before we proceed to adjourn?

Question: Vern – *In terms of preparation for the next meeting, what is the advice that Paul and your staff would give us, what should we do to get ourselves up to speed?*

Paul -Get familiar with the laws and rules and how those two envision this process to work. Between us and the legislature we spent a lot of time thinking about that, and that is important that everybody have an understanding of what needs to come out the other end as far as this pilot program. These are really intended to be a pilot for what will become the statewide process with whatever modifications are recommended as a result of the pilot

Ken – Paul one other thing that might be helpful to some of the committee members is because this is going to be using site specific methodology, is maybe a few paragraphs in some of the different methods that are out there like the instream flow incremental methodology and so on, so that they are familiar with those because we are going to see those being proposed by the contractor.

Paul – Perhaps a brief presentation on IFIM, maybe we can go back over some of the stuff that we presented to the study committee.

Ken – There are more than the IFIM, but it might be useful I think to just give a brief overview of some of the different techniques.

Ralph - I have a number of PowerPoint presentations on those that have been developed in Connecticut and Rhode Island; I'll give you a copy at least to get started.

Ken - It sounds like Ralph has just volunteered to give a presentation.

Ralph – I think that the statute says that EPA is supposed to be a representative, but when I left this morning I worked for USEPA agency but see that it has changed to an association. Marie will fix his tent card before the next meeting.

Brian – Ken, are we clear and happy with our role and function, do we have the flexibility to change, do we need perhaps to develop a more specific charter on what we are going to want to look at or not look at? We kind of have an overview of our role from DES, do we want to look at it more closely? Are we comfortable right now with this committee?

Ken – I think it's worth discussion, and understanding that we do have the boundaries that were set by the general court.

Brian – I am a little uncomfortable with the extent of our role in selecting the contractor. Certainly I think we could have a lot of input in to what goes into scope of work, but I am not clear in how far DES wants to go in our involvement in evaluating the different competitors.

Paul – I can tell you the draft concept that we had in mind was basically that two DES people, two people from this committee and 2 people from the other committee would form a selection committee and that we would comply with state and federal procurement requirements and do a qualifications based selection.

Ken – Our committee, if I am correct, is actually advisory. We are not the final voice.

Paul - That concept may change as I have not run it all the way up the chain of command yet.

Ralph – I guess it is sort of a one step thing. Maybe once a contractor is selected and they know how much money they have to do this protected instream flow study, have us somehow involved in how they are going to do that. They have to do a study that is representative and there are different ways to do that in terms of picking cross sections. I think it would be useful if we could have some say too. I am not trying to do their job for them, but to have them say this is how they are going to spend the money by doing a section here, here, or however they do it and give that to us in a presentation. We should have a little bit of give and take on that decision because there may be people on this committee that know the river a lot better than the contractors.

Paul – I think we would prefer that. That the committee be clearly nuts and bolts oriented, because it is a pilot program, because there are no well defined methods for doing what we propose to do relative to setting protective instream flows with the level of effort put into it with the money we have, you can

do it if you want to spend millions. You can do it on a standard setting basis if you want to spend thousands, but we are proposing doing it on an intermediate level of effort, which is fairly new territory.

Ken – My impression is that what Ralph is talking about should occur at the proposal stage. Once you have narrowed down to three or four contractors in your RFP, they are going to ask them to elucidate what the methodology is. What I am hearing you say is they can easily spend all this money. Nobody is going to come in, and the contract is not supposed to be fee based anyways, it is qualification based and they are going to tell us - *this is what we are proposing, this is how we are preparing to take these limited resources* - and that is going to be the defining point in terms of who you are ultimately going to select.

Paul – Yes.

Most of that should be handled when the guy comes onboard; the methodology is pretty well established through their proposal.

Paul - Yes, with the provision that as the study progresses, there will still be some iterations on that. We would really like to get a contractor that is able to iterate within the framework of the scope and recognize that it is a lump sum contract to iterate on a technical basis as information is produced.

Vern – To follow up on Brian's question, once we get down to the point where you have selected lets say five or six or three or four, whatever it is going to be that you are going to request an RFP from. How are the members of this group supposed to react if we get calls from some of those three or four firms asking for suggestions from us? I raise it because a couple of months ago I had a couple of calls from consulting firms wanting to know what do you know about the background on this, etc., etc. I didn't say anything inadvertently that was harmful to anybody else, but it seems like in terms of procurement we have some rules, that what you say to one, you have to say to all. That sort of becomes a little bit difficult.

Paul – You are right; we have to be quite conscious of that. Once we start this selection process, there will be a designated selection committee and nobody else talks to the prospective contractors and the selection committee only talks to the contractors in the forum of the selection process. We fully intend to have a informational meeting with the short listed prospective contractors that will be a pre-discussion which all the prospective contractors will be there and have access to that information, and to not provide information outside of that kind of a forum.

Vern – From a practical standpoint right now, from this date forward, it seems like it would be appropriate for us to just say, I cannot comment.

Paul – We have sent a letter to everybody that responded saying this is going to be an extended process and please don't contact us, we will contact you. I think committee members, the same thing.

Ken – Any other questions or discussion?

John Nelson – I would like to change the phone number listed for me on the contact sheet. It is my business number where you can reach me, and it is 617-788-2782. My e-mail is fine.

Ken – It is probably worthwhile for everyone to take a quick look at this because this will be the list that people will use to try to contact each other which is under the yellow tab. This is the list of people who we will need to be contacting

Brian – My number is wrong also, it is 226-7807.

Paul – One additional item, we would like to communicate with members of the committee by e-mail directing them to a web site to pick up material for the next meeting. Does that work for everyone?

Answer – Yes.

- **Ken Kimball made a motion to adjourn the meeting.**
John Nelson seconded the motion. All in favor signify by saying Aye.

11:30 Meeting adjourned